<u>REMARKS</u>

Applicant appreciates the time taken by the Examiner to review Applicant's present application. This application has been carefully reviewed in light of the Official Action mailed October 14, 2005 ("the Office Action"). On pages 7 and 8 of the Office Action, the Examiner seems to acknowledge that "neither Chi nor Jammes teach an interaction metric between retail items that models the free, i.e., not predefined interactions between items" as submitted in the previous response dated August 19, 2005. However, Examiner contended that the claims do not explicitly recite any limitation specifying "items freely associating and not having predefined interactions." Claims 1, 12, and 13 have been amended herein to particularly recite "freely associated retail items"; and Claim 14 has been amended to recite "items freely associating and not having predefined interactions." No new matter has been presented. Claims 1-18 remain pending. Applicant respectfully requests reconsideration and favorable action in this case.

<u>Rejections under 35 U.S.C. § 103</u>

Claims 1-5 and 10-18 were rejected as being unpatentable over U.S. Patent No. 6,509,898 ("Chi") and U.S. Patent No. 6,484,149 ("Jammes"). Claims 6-9 were rejected as being unpatentable over Chi and Jammes in view of U.S. Patent No. 6,144,962 ("Weinburg"). The rejections are respectfully traversed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re* Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Such teaching or suggestion to make the claimed combination must be obvious at the time the invention was made. As described in further detail below, the pending Claims are submitted to

be not obvious to one of ordinary skill in the art at the time the invention was made, in view of the cited art.

Motivation to combine

In the Office Action, the Examiner argued that "[w]ith increasing popularity and accessibility of the Internet, the number of merchants using and desiring to use the World Wide Web to advertise and sell products is growing rapidly. Therefore, this combination will produce an electronic shopping system that provides a clear and optimized view of products and merchandise." The Examiner's attention is respectfully directed to U.S.C. § 103 (a) which recites, "[a] patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been *obvious at the time the invention was made* to a person having ordinary skill in the art to which said subject matter pertains" (emphasis added). Applicant submits that the Examiner's statement does not seem to support a proper motivation to combine Chi and Jammes *at the time the invention was made.* Further, neither Chi nor Jammes seems to teach or suggest any desirability to modify one another so to arrive at an invention exactly as set forth in claims 1-18. Therefore, Applicant submits that lacking a proper motivation to combine, a case of obviousness cannot be established.

Claim limitations of Claims 1-18

The invention relates to retail items for sale. Independent Claim 1 recites:

> A system for graphically displaying interaction data between items in a retail setting, for various retailing-related activities, the system comprising:
> a computer having memory capable of operating pursuant to instructions comprising an algorithm, wherein the instructions comprise instructions executable to:
> load an interaction metric between retail items into memory, wherein the interaction metric models interactions between freely associated retail items;
> optimize placement of nodes and edges pursuant to the interaction metric, wherein nodes represent retail items and edges represent interactions between retail items; and
> generate generating a graphical representation of the nodes and edges with corresponding interaction metrics.

Independent Claims 12-13 and 14 have been amended to recite similar limitations, i.e., "the interaction metric models interactions between freely associated retail items" and "items freely associating and not having predefined interactions", respectively. Claims 2-11 and 15-18 depend from either Claim 1 or Claim 14 and thus also recite at least one of the aforementioned limitations. Each pending claim therefore recites, "an interaction metric ... wherein the interaction metric models interactions between freely associated retail items "or "items freely associating and not having predefined interactions."

Freely-associated retail items may be purchased with any and all other freely-associated retail items. Because of this free association among retail items, billions of potential cause-effect interactions may occur in one retailer's store at any given time (Specification, paragraph [0006]). Further, there are often no *predetermined relationship* associations between the sales of one retail item with any other retail items. Embodiments of the invention are directed to loading an interaction metric describing interactions between retail items that are freely associating and not having predefined interactions, and, utilizing this interaction metric, generating a graphical representation of the relationships between the retail items. In contrast, the cited art appears to be primarily concerned with nodes having predefined parent-child relationships. In other words, the cited art appears to be concerned with nodes, (e.g., web sites), which are not freely associating and which have predefined relationships. As discussed in further detail below, the cited art does not teach or suggest the limitations of the pending claims.

<u>The cited art does not teach or suggest an interaction metric between items, the items freely associating and not having predefined interactions, optimizing placement of nodes and edges pursuant to the interaction metric where nodes represent items and edges represent interactions between items; and generating a graphical representation of the nodes and edges with corresponding interaction metrics</u>

Chi does not teach or suggest the claimed interaction metric between retail items, retail items freely associating. Chi appears to teach a method for graphically displaying web page usage (Chi, col. 7 line 52). Chi appears to be concerned with web pages, (Chi, col. 7, line 48). Web pages are not and do not read on to the claimed term "retail items", at least because web pages generally have predefined code instructing association and interaction with other web

pages. Web pages are hierarchally arranged and most often hierarchally utilized. Web pages do not and cannot freely associate with one another and web pages have predefined interaction protocols.

The cited col. 7, lines 36-45 of Chi seems to disclose a graph layout method performed based upon usage information, "[t]hese methods provide degree of interest functions for graph visualizations, thereby minimizing cognitive load" (*i.d.*). Specifically, Chi discloses that, "[t]he present invention addresses the problem of laying out large directed graphs, such as found in the world wide web, so that the relevant relationships are exposed. ... [The layout is] based upon usage data" (Chi, col. 7, lines 46-52). In other words, Chi appears to be concerned with directed graphs based upon usage data. The usage data is not an interaction metric that "models interactions between freely associated retail items" as the associations between the web pages are predefined. Therefore, Chi does not teach or suggest, "an interaction metric ... wherein the interaction metric models interactions between freely associated retail items" as set forth in independent Claims 1, 12, and 13, or "items freely associating and not having predefined interactions" as set forth in independent Claim 14.

The deficiencies in Chi with respect to the limitations of the pending claims cannot be remedied by the secondary reference, Jammes, because Jammes also does not teach or suggest, "an interaction metric ... wherein the interaction metric models interactions between freely associated retail items" as set forth in independent Claims 1, 12, and 13 or "items freely associating and not having predefined interactions" as set forth in independent Claim 14. Jammes appears to teach a system and method for designing and operating an electronic store. Although Jammes appears to be concerned with retail items, Jammes seems to be concerned with a *hierarchial* representation of products and product *groups* (Jammes, abstract). More specifically, Jammes appears to disclose a graphical display of an electronic store, where the retail goods of the electronic store are hierarchially arranged into like groups of goods such that tiered departments are formed (Jammes, fig. 4).

Similarly, Weinberg does not teach or suggest, "an interaction metric ... wherein the interaction metric models interactions between freely associated retail items" as set forth in independent Claims 1, 12, and 13, or "items freely associating and not having predefined interactions" as set forth in independent Claim 14. For example, the cited passage of Weinberg appears to be concerned with parent-child relationships of web pages (Weinberg, col. 2, lines 32-48). As discussed above with respect to Chi, web pages cannot be construed as "freely

associated retail items" as set forth in independent Claims 1, 12, and 13 or "items freely associating and not having predefined interactions" as set forth in independent Claim 14. Consequently, Chi, Jammes, and Weinberg individually and in their alleged combination do not teach or suggest the claimed, "an interaction metric ... wherein the interaction metric models interactions between freely associated retail items" as set forth in independent Claims 1, 12, and 13, or "items freely associating and not having predefined interactions" as set forth in independent Claim 14. At least for the foregoing reasons, Applicant submits that the pending claims are not obvious in view of the cited art and therefore should be allowed. In particular, Applicant submits that a *prima facie* case of obviousness has not been established because there was no motivation to combine Chi, Jammes, and/or Weinberg. Even assuming they can be combined, Chi, Jammes, and Weinberg, individually and in combination, do not teach or suggest the limitations of the pending claims. Accordingly, Applicant respectfully requests the withdrawal of the rejections against Claims 1-18.

Applicant has now made an earnest attempt to place this case in condition for allowance. Other than as explicitly set forth above, this reply does not include an acquiescence to statements, assertions, assumptions, conclusions, or any combination thereof in the Office Action. For the foregoing reasons and for other reasons clearly apparent, Applicant respectfully requests full allowance of Claims 1-18. The Examiner is invited to telephone the undersigned at the number listed below for prompt action in the event any issues remain.

An extension of one (1) month is requested and a Notification of Extension of Time Under 37 C.F.R. § 1.136 with the appropriate fee is enclosed herewith.

The Director of the U.S. Patent and Trademark Office is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 50-3183 of Sprinkle IP Law Group.

Respectfully submitted,

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